Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 39 of 2001
(Old No. 1193 / 1991)

Unique Hotels and Restaurant (P) Ltd.
Rajpur Road, Dehradun.

…….. Applicant/Revisionist

Versus

The Commissioner of Sales Tax,
Uttar Pradesh, Lucknow

……. Opposite Party

Mr. Lalit Tewari, learned counsel for the revisionist
Instructed by Mr. Alok Singh, Senior Advocate.
Mr. P. Maulekhi, learned Addl. Advocate General
for the respondent-State.

Hon'ble Prafulla C. Pant, J.

This revision appears to have been filed before the Allahabad High Court in the year 1991, from where it has been received by transfer to this Court, under Section 35 of the U.P. Reorganization Act, 2000, for its disposal.

2) The revision, preferred under Section 11 of the U.P. Sales Tax Act, 1948 is directed against the order / award dated 31.05.1991 passed by Sales Tax Tribunal, Muzaffarnagar (camp at Dehradun).

3) It involves following question of law:

"Whether, the Tribunal has erred in law in upholding the penalty imposed on the assessee under Section 15-A)(1)(e) of the Sales Tax Act?"

4) Heard learned counsel for the parties.

5) Learned counsel for the revisionist argued that assessment for the assessment year 1984-85 is still in question in S.T.R. No. 1259 of 1988. However, on enquiry from the Registry, no such revision appears to have been pending before this Court. As such, on said ground no benefit can be given to the assessee-revisionist in this case. The question before this Court is relating to the penalty imposed against the assessee for non payment of tax within the particular time allowed. In this connection, it is pertinent to mention here, what Section 15-A(1)(e) says:

"15-A. Penalty in certain cases.

(1) If the assessing authority is satisfied that any dealer or other person –

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(e) has, without reasonable cause, failed to pay, within the time allowed the tax due from him; or

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it may, after such enquiry if any, as it may deem necessary, direct that such dealer or person shall pay, by way of penalty, in addition to the tax, if any, payable by him, ……."

From the perusal of the impugned order and other annexures filed with the revision, it appears that the assessee not only failed to pay the tax for the aforesaid

Assessment year, but also the cheque issued by him on 23.09.1986, for payment of Rs. 23,500/- got bounced from the bank. In the circumstances, the assessee cannot be said to be innocent and his act is in violation of provisions of Section 15 as quoted above. As such the learned Tribunal has rightly upheld the penalty imposed on the assessee. From the record, it appears that the assessee has changed his stand from time to time for non payment of tax. At one stage, it appears from the record that his counsel took the defence that due to the bad financial position, tax could not be paid while at the another point of time assessee took the stand that he could not realize the sales tax from his customers. Assessee is not a small Hotel, but from para 1 of this revision itself, it appears that the assessee is engaged in the business of running a hotel and restaurant attached to it and has also licence under provisions of U.P. Excise Act.

6) In the aforesaid circumstances, the question of law is answered in favour of the revenue. Accordingly, the revision is dismissed.

(Prafulla C. Pant, J.)

Dt. 4th August, 2005
H.Negi